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In the Supreme Court of the United States

OCTOBER TERM, [redacted] 1969

No. [redacted] 56

CHARLES EDMUNDSON and ROY HAMILTON,
Petitioners,

v.

THE STATE OF TENNESSEE, *ex rel.*,
JUDGE W. PRESTON BATTLE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioners, Charles Edmundson and Roy Hamilton, defendants below, respectfully pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Tennessee which was entered against them on January 20, 1969, in the case of *State of Tennessee v. James Earl Ray, Alias Eric Starvo Galt, Alias John Willard, Alias Harvey Lohmeyer.* A copy of the order of the Tennessee Supreme Court is printed in the Appendix hereto.

OPINIONS BELOW.

The opinion of the Criminal Court of Shelby County, Tennessee is unreported and is printed in the Appendix hereto, *infra,* pp. 4a-13a. The order of the Supreme Court of the State of Tennessee, which was entered on Novem-

ber 8, 1968, is unreported and is printed in the Appendix hereto, *infra*, pp. 3a-4a. The order of the Court of Criminal Appeals of the State of Tennessee is unreported and is printed in the Appendix hereto, *infra*, pp. 2a-3a. The order of the Supreme Court of the State of Tennessee, which was entered on January 20, 1969, is unreported and is printed in the Appendix hereto, *infra*, p. 2a

JURISDICTION.

The judgment of the Supreme Court of the State of Tennessee, denying the petition for writs of certiorari and supersedeas, was entered on January 20, 1969.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED.

1. Can a State trial court, consistent with the First and Fourteenth Amendments to the United States Constitution, in its efforts to assure a fair trial, use its injunctive and contempt powers against members of the press so as to prohibit the publication of news?

2. Does repetition in the press of statements made in violation of a State trial court's injunction by participants in a criminal case pose such a "clear and present danger" to the State or to the administration of its courts as to nullify a newspaper reporter's rights under the First and Fourteenth Amendments to the United States Constitution?

3. Is it a denial of due process under the Fourteenth Amendment to the United States Constitution for an individual to be held in contempt of orders of injunction which neither name or specify that individual, nor name or specify any person to whom said individual is related

by way of privity, common interest, representation or control—especially where the contempt conviction penalizes the exercise of certain basic rights guaranteed to all men by the First and Fourteenth Amendments?

4. Not having covered an individual by its injunction, and thereby denying him the right to challenge the scope thereof, does a State trial court's determination that said individual is guilty of criminal contempt of its orders and the court's concomitant refusal to immediately impose sentence therefor deny such person his right to a speedy trial, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution?

CONSTITUTIONAL PROVISIONS INVOLVED.

The Constitutional provisions involved are the First, Sixth, and Fourteenth Amendments to the United States Constitution. These are printed in the Appendix, *infra*, p. 1a.

STATEMENT OF THE CASE.

The Petitioners are members of the press. Charles Edmundson is a reporter for *The Commercial Appeal*, and Roy Hamilton is a reporter for the *Memphis Press-Scimitar*. Both newspapers are published in Memphis, Tennessee. The occasion for the filing of this petition grows out of the publication of certain newspaper articles written by these reporters of and concerning James Earl Ray, for which actions the Petitioners were, on September 30, 1968, decreed by The Honorable W. Preston Battle, judge of the Criminal Court of Shelby County, Tennessee, to be guilty of criminal contempt.

Awaiting trial on several charges, one of which is murder in the first degree, James Earl Ray, the accused, has been held prisoner in the Shelby County, Tennessee

Jail for some months. Trial was originally set for November 12, 1968, but has been reset for April 7, 1969.

Following Ray's incarceration, Judge Battle, the judge before whom Ray is to be tried, on July 18, 23, 29 and 30, 1968, entered several orders of injunction directed to the lawyers and other individuals participating in the case and to courthouse personnel, enjoining them from taking part in press interviews or press conferences or making extrajudicial statements regarding certain specified topics relating to the accused or to the trial, and enjoining them from making "any and all other statements which may be prejudicial to a fair trial by an impartial jury." Certain members of the Tennessee Bar were appointed by the judge to serve as *amici curiae* for the purpose of enforcing the orders of injunction. The pertinent parts of these orders read:

> "All lawyers participating in this case, their assistants, associates, staff members, investigators and employees under their supervision and control, County Medical Examiner, Jury Commissioners, Criminal Court Clerk, County Sheriff, Police Officials and other law enforcement officers, employees of this Court and all other persons employed in the "Criminal Courts Buildings", their associates, deputies, assistants, staff members and personnel under their supervision and control, are forbidden to take part in interviews or press conferences for publicity and are enjoined from making extrajudicial statements about this case which involve: (1) the personal belief of the Declarant as to the guilt or innocence of the accused; (2) the plans of the Declarant relating to the preparation or conduct of the trial, the theory, techniques and strategy of the Declarant in the preparation and trial of the case; (3) the jurors or potential jurors who may serve; (4) the comments of the Declarant about the merits of the case and about any evidence which may be presented; (5) the credibility of or informa-

> tion concerning any known or intended witnesses or the treatment, acts and attitude of the defendant, and are further enjoined from making any and all other statements which may be prejudicial to a fair trial by an impartial jury in this case, whether specified herein or not." (All of the court's orders of injunction are printed in the Appendix, *infra*, pp. 16a-23a.)

Neither the press nor the Petitioners herein were enjoined, either specifically, by class or by relationship to named or specified parties, in any of the orders of the court.

Petitioners, Edmundson and Hamilton, wrote articles published in their respective papers on September 12, 1968. Edmundson quoted Renfro T. Hays, a private detective employed by Ray's counsel, Arthur B. Hanes, Sr., as comparing some of the conditions in Ray's cell with "devices used by Communist police agents to destroy the health and balance of their victims"; and as speaking of "bright lights kept shining night and day, of television cameras constantly monitoring the prisoner and of and [*sic*] uninterrupted lack of privacy." He also quoted Hays as saying, "I don't for a moment think Sherriff Bill Morris is trying to drive this guy out of his mind. But it's the effect of this type of surveillance that counts." (The text of this article is printed in the Appendix, *infra*, pp. 23a-24a.)

Hamilton in his article stated that it had been earlier reported that the Senior Hanes had "intimated" in a Birmingham interview that "Ray might not be able to stand trial in November because his health was being jeopardized by intensive security measures in his Shelby County jail cell." The article also stated that "In the earlier report, Hanes Sr. was quoted as saying that Ray has undergone 'enough to bug anybody' during his confinement. He said Ray has had two guards 'breathing down his neck 24 hours a day' and sometimes has to cover

his eyes against the bright lights 'shining on him night and day' in order to sleep." The article further reported that "Hanes charged that the security setup surrounding Ray constitutes 'cruel and inhuman treatment.' " (The text of this article is printed in the Appendix, *infra,* pp. 25a-26a.)

A number of the printed statements contained in these two articles closely parallel statements made earlier in open court by Arthur B. Hanes, Sr., upon the presentation of an oral motion. (These statements are printed in the Appendix, *infra,* p. 27a.)

Upon petition of the *amici curiae,* on September 17, 1968, *scire facias* was issued and served upon Hanes, Hays, Edmundson and Hamilton, requiring them to appear and show cause why they should not be held in contempt for violation of the orders of injunction. Ten days thereafter, on September 27, 1968, the Petitioners appeared before the court pursuant to the terms of the writ.

At the conclusion of all of the evidence introduced at the hearing, motion was made on behalf of Edmundson and Hamilton to quash the *scire facias* on the ground that the court's power to punish for contempt is limited by the First and Fourteenth Amendments to the United States Constitution, and that punishment on these facts would be in violation of their rights of free speech and free press as citizens and as members of the press. (Record, vol. 2, at 120, and vol. 3, at 270.) On September 30, 1968, the court overruled this motion and adjudged all four respondents to be in contempt. However, the court refused to impose sentence at that time, stating that "It might well be that future action and conduct of all or some of these respondents might be considered as a mitigation or even as a purgation of the offense." (A copy of the court's opinion is printed in the Appendix, *infra,* pp. 4a-13a.)

Immediately thereupon, Edmundson and Hamilton moved the court to reconsider and discharge them, or, in the alternative, to pass sentence upon them in order that they might have a clear right to take an appeal. (Record, vol. 3, at 299.) This motion was overruled. (A copy of the court's opinion is printed in the Appendix, *infra*, pp. 13a-14a.)

Thereafter, the Petitioners filed a motion for a new trial in which, among other specifications, they assigned error on the grounds that the judgment of the court was in violation of the rights of free speech and free press guaranteed to them by the First and Fourteenth Amendments to the United States Constitution, and, additionally, that it deprived them of their liberty and property without due process of law in violation of their rights under the Fourteenth Amendment. (Record, vol. 3, at 340 & 343.) This motion was overruled by the court on the ground that it was premature since no sentence had yet been imposed. (A copy of the court's order is printed in the Appendix, *infra*, pp. 15a-16a.)

Thereafter, Edmundson and Hamilton, for the purpose of obtaining a reinstatement of their basic Constitutional rights which the trial court's decision was designed to suspend during the Ray trial, on November 4, 1968, petitioned the Supreme Court of the State of Tennessee for writs of certiorari and supersedeas to the Criminal Court of Shelby County, Tennessee. On November 8, 1968, the supreme court declined jurisidiction, stating that petitions of this kind should be made to the Tennessee Court of Criminal Appeals. (A copy of the court's order is printed in the Appendix, *infra*, pp. 3a-4a.)

Seasonably, the petition, appropriately modified, was, on November 15, 1968, presented to the Court of Criminal Appeals of the State of Tennessee. (Record, vol. 1, at 33.)

The writs prayed for in the petition were denied by this court on the ground that the trial court's order was merely interlocutory and not final since punishment had not yet been imposed. The court concluded that the judgment against the Petitioners was not such a decision as should be reviewed by certiorari. The order of the Tennessee Court of Criminal Appeals was entered on November 18, 1968. (A copy of the court's order is printed in the Appendix, *infra*, pp. 2a-3a.)

Seasonably, on December 6, 1968, Edmundson and Hamilton petitioned the Supreme Court of the State of Tennessee for writs of certiorari and supersedeas to the Tennessee Court of Criminal Appeals. [Section 16-452 of the Tennessee Code provides that the Supreme Court of Tennessee can review decisions of the Court of Criminal Appeals only by certiorari. 4 TENNESSEE CODE ANN. § 16-452 (Supp. 1968).] Reiterating their charges that they had been denied their rights of free speech and free press in violation of the First and Fourteenth Amendments to the United States Constitution, and that they had been denied due process in violation of the Fourteenth Amendment, the Petitioners requested that the judgment of the Court of Criminal Appeals be reversed and that the court review and reverse the judgment of the Criminal Court of Shelby County, Tennessee. (Record, vol. 1, at 1.) This petition was denied on January 20, 1969, the court giving no reasons for its decision. (A copy of the court's order is printed in the Appendix, *infra*, p. 2a.)

Having exhausted all other remedies, and believing that they have been denied certain basic Constitutional rights, Charles Edmundson and Roy Hamilton now respectfully petition this Honorable Court for a writ of certiorari to the Supreme Court of the State of Tennessee.

REASONS FOR GRANTING THE WRIT.

1. This Court has never permitted the press to be criminally prosecuted for merely publishing an accurate account of newsworthy information which has been voluntarily submitted to it. However, if the Petitioners' convictions are allowed to stand, such a pernicious precedent will be established; and the secure foundation of the First Amendment will be left trembling.

In the leading cases of *Bridges v. California,* 314 U.S. 252 (1941); *Pennekamp v. Florida,* 328 U.S. 331 (1946); and *Craig v. Harney,* 331 U.S. 367 (1947), this Court unequivocally refused to allow the States to silence the press by means of contempt convictions. Although opinions of this Court have suggested that, under extraordinary circumstances, courts might be justified in imposing sanctions of censorship against the news media when the safety of the State is jeopardized or where there is an imminent threat that the orderly administration of the courts will be destroyed, it is noteworthy that this contingency has never occurred.

Even in the recent case of *Sheppard v. Maxwell,* 384 U.S. 333 (1966), where the proceedings were imbued with a "carnival atmosphere," this Court gave no indication that the trial judge would have been justified in using his injunctive and contempt powers to suppress the publication of news. In fact, it was expressly stated that the massive pretrial publicity did not, by itself, deny the defendant his right to due process. *Id.* at 354. Instead, the defendant's conviction in *Sheppard* was reversed for the sole reason that the trial court had not adequately utilized its inherent authority to regulate its internal proceedings and those persons subject to its internal jurisdiction. *Id.* at 358.

By expanding the purview of its injunctive orders through judicial construction so as to find the Petitioners guilty of contempt, the trial court in the instant case has turned sharply off the course charted by this Court in *Sheppard*. It has attempted to transfer from itself to members of the press the weighty burden of assuring that a defendant will receive a fair trial. Such an endeavor contravenes the fundamental concept underlying the Bill of Rights—that they are intended to restrict governmental, not individual, action. It would seem axiomatic that, if such a displacement can ever be justified, it must be limited to those situations where a trial judge has exhausted all other means at his disposal to effectively protect the accused.

Therefore, it is respectfully submitted that, under the circumstances of the instant case, the trial judge's action in placing a direct responsibility for the preservation of fairness upon members of the press, by attempting to regulate and control the publication of news, was unwarranted and illegal, and, consequently, an unlawful abridgment of the Petitioners' rights of free speech and free press.

2. Although this Court has alluded to the possibility that a State court might be justified in invoking its contempt powers against a recalcitrant press where the exercise of an unabridged right to free speech threatens the safety of the State or the destruction of the orderly administration of its courts, *Craig v. Harney*, 331 U.S. at 373; *Pennekamp v. Florida*, 328 U.S. at 349-50; *Bridges v. California*, 314 U.S. at 262-63, the "clear and present danger" standard, as demonstrated in *Sheppard*, has never been sanctioned by this Court for application in the narrow context of a possible miscarriage of justice resulting from the publication of news or editorial comment con-

cerning a single criminal case. How much more sweeping and unsanctioned then is the application of this standard by a State trial court when the exercise of the rights to free speech and free press consist only of reporting statements made by participants in the case who are directly subject to the trial judge's control?

As this Court recently recognized in the *Sheppard* case:

> "A responsible press has always been regarded as the handmaiden of effective judicial administration, especially in the criminal field. Its function in this regard is documented by an impressive record of service over several centuries. The press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism. *This Court has, therefore, been unwilling to place any direct limitations on the freedom traditionally exercised by the news media* * * *." 384 U.S. at 350 (Emphasis added.)

Furthermore, the startling impropriety of the trial court's action is spotlighted by the fact that the Petitioners did nothing more than publicize statements regarding the treatment which was being accorded James Earl Ray. Our society demands that any possible mistreatment of a prisoner be immediately reported to the public. Moreover, it is inconceivable that publicity regarding the possible mistreatment of an individual while in jail could in any way prejudice his right to a fair trial.

Therefore, it is respectfully submitted that the erroneous application of the "clear and present danger" standard by the trial court constituted an unlawful abridgment of the Petitioners' rights of free speech and free press.

3. It would seem to be a basic proposition of law that an individual cannot be prosecuted for violating an order of injunction which fails to indicate that it is applicable to him. *See Regal Knitwear Co. v. NLRB,* 324 U.S. 9 (1945); *Lanzetta v. New Jersey,* 306 U.S. 451 (1939). However, that is precisely what occurred in the instant case for Edmundson and Hamilton were neither named or specified, nor linked by relationship to parties named or specified, in the orders of injunction.

On their face, the trial court's orders purported to restrict conduct of the members of its official family. There was nothing to indicate that they were designed to apply to members of the press. In fact, in its order of July 30, 1968, the trial judge indicated the limited scope of his decree by stating:

> "The Court recognizes the wide and pervasive publicity which has been and will be an inevitable incident of this trial. The Court further recognizes that there are many individuals who are beyond the jurisdiction of this Court, but who may be interested in the outcome of this trial, and whose statements may have been violative of this Order had the Court jurisdiction over such parties. As to such persons, the Court *urges self-imposed compliance* with this Order in the interests of a fair trial to the defendant and to the State of Tennessee.
>
> "In accordance therewith the Court orders a certified copy of this Order to be sent by the Clerk of this Court to all persons named herein or subject hereto, *and* all newspapers of general circulation, radio and television stations within the jurisdiction of this Court." (Emphasis added). (The entire order is printed in the Appendix, *infra,* pp. 20a-23a.)

However, by finding the Petitioners to be in contempt, the court has now construed its own orders so that they

apparently have no limitation. Such an unforeseeable and retroactive judicial expansion of the precise language of the orders is at war with the fundamental concept of due process that acts subject to criminal prosecution must be defined with great specificity. *Bouie v. City of Columbia*, 378 U.S. 347, 352 (1964).

The Petitioners' convictions, if allowed to stand, compel the conclusion that anyone in the country at large who reads and then publishes, either by newspaper article or by word of mouth, any prohibited statement of any party specified in the orders of injunction thereby violates said orders. Such a result is intolerable and violative of the basic tenets of our form of government.

Moreover, the iniquity of the Petitioners' convictions is further enhanced by the fact that Edmundson and Hamilton are daily being deprived of their inherent property rights to pursue a vocation and to earn a living. By refusing to impose sentence upon them, the trial court has kept the club of threatened punishment and the carrot of possible forgiveness over their heads. Responsible news reporters cannot conceivably function effectively when harassed by such instruments of censorship.

Therefore, it is respectfully submitted that the Petitioners have been denied their basic rights of due process under the Fourteenth Amendment to the United States Constitution.

4. This Court has recently recognized that the Sixth Amendment's guarantee of a speedy trial precludes the States from indefinitely prolonging the oppression, anxiety and concern which accompanies public accusations. *Klopfer v. North Carolina*, 386 U.S. 213, 222 (1967). By refusing to impose sentence upon the Petitioners in the instant case, the trial judge has flagrantly violated this mandate.

While this Court has stated that a mere delay in sentencing does not always deprive an individual of his right to a speedy trial, nevertheless, it has been observed that a Constitutional deprivation will occur if such delay is purposeful or oppressive. *See Pollard v. United States,* 352 U.S. 354, 361 (1957); *Welsh v. United States,* 348 F.2d 885 (6th Cir. 1965); *United States v. Grabina,* 309 F.2d 783, 786 (2d Cir. 1962), *cert. denied,* 374 U.S. 836 (1963). Under the circumstances of the present case, it would seem self-evident that the delay was both purposeful and oppressive.

The trial court has attempted to erect insurmountable barriers for the Petitioners. By failing to give any indication that its injunctive orders were applicable to members of the press, the court denied Edmundson and Hamilton the opportunity to directly challenge the validity of these orders. Then, by refusing to impose sentence upon them, it prevented the Petitioners from having their convictions reviewed by means of simple appeal. Consequently, Edmundson and Hamilton are now in the insufferable position of being forced to withhold information from the public out of fear that they might transgress the amorphous boundaries of a judicial order, the mettle of which they have been unable to test in any appellate court. The trial judge has, thus, devised a unique method of censorship which, unless this Court intervenes, will escape review—at least throughout the period when the censorship is desired, *i.e.,* until Ray's trial has ended.

This is a matter of broad nationwide concern to all news media and their reporters. If this proves an effective means by which a trial judge can impose an illegal censorship without appellate review, it must be anticipated that other courts will employ the same stratagem.

Therefore, it is respectfully submitted that the trial judge's failure to impose sentence in the instant case was purposeful, arbitrary and oppressive, and has denied the Petitioners their right to a speedy trial.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

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February, 1969.